



# CORONAVIRUS

APRIL 15, 2020 • NO. 2

## CARES Act: What Employers Should Know About Expanded Unemployment Insurance Benefits

*Workers facing unprecedented economic hardship due to the COVID-19 pandemic can potentially seek temporary relief under the enhanced unemployment insurance provisions of the CARES Act. This new law not only broadens eligibility for unemployment insurance to independent contractors and self-employed individuals, but also increases the amount an eligible individual receives. Amid the recent surge in unemployment claims, employers should be prepared to answer key questions that have arisen about this enhanced assistance.*

Among many relief measures adopted in response to the COVID-19 pandemic's economic devastation, President Trump on March 27, 2020, signed the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The CARES Act contains key sections describing federally provided unemployment insurance ("UI") benefits, which may be available to workers who are unable to work during the pandemic.<sup>1</sup>

At the outset, it is easier to list those who are **not** entitled to enhanced and extended UI benefits than to list those who are (and what they will receive and for how long). Generally speaking, those who are able to work remotely (but do not), those receiving paid leave benefits under the Families First Coronavirus Response Act ("FFCRA"), new entrants to the work force who are unable to find a job as well as individuals who are disqualified from receiving state UI benefits are **ineligible** for CARES Act UI benefits.

The basic premise behind the UI portions of the legislation was that, without an enhanced payment, low wage workers

would find it difficult, if not impossible, to subsist on regular state-paid UI benefits during the period of the pandemic (while subject to variance on a state-by-state basis, the state-paid benefits are typically about 40 percent of the workers average weekly wage and subject to weekly maximums). A link to **maximum** weekly benefit amounts provided under state unemployment compensation laws is [available here](#). Despite some concern that it might provide an incentive for low wage workers to collect UI benefits instead of working, in addition to any payment the worker may receive in state-provided IU, the CARES Act provides a weekly payment of \$600 to a broad class of workers impacted by COVID-19.<sup>2</sup>

The CARES Act provides the enhanced UI payment principally to two groups of workers: (1) those who are otherwise already eligible to receive state UI benefits and (2) individuals, like independent contractors, self-employed workers, and gig economy service providers, who traditionally have not been entitled to receive state UI benefits.<sup>3</sup>

## EMPLOYEES ALREADY ELIGIBLE FOR STATE UI BENEFITS

The CARES Act provides a \$600 Pandemic Unemployment Compensation (“PUC”) payment in addition to “payment of regular compensation in amounts determined if the State law of the State were applied with respect to any week in which the individual is otherwise entitled to receive regular compensation” to all workers who are eligible to receive state UI benefits. There are no eligibility requirements imposed by the CARES Act other than those that already exist under state law and employees will not need to file a separate claim for benefits in order to receive the PUC benefit. States are authorized to waive the first week waiting period contained in state UI laws (which will be funded by the federal government), enabling employees otherwise eligible to receive a PUC payment to receive that payment beginning the week after the CARES Act was signed into law. Unless extended, PUC benefits end July 31, 2020.

## INDEPENDENT CONTRACTORS, SELF-EMPLOYED, AND GIG ECONOMY WORKERS

The CARES Act also provides benefits to individuals who have traditionally been ineligible for state UI benefits. This Pandemic Unemployment Assistance (PUA) benefit is available to individuals who are self-employed, do not have sufficient work history or otherwise would not qualify for regular UI under state law. Eligible individuals are entitled to receive a maximum of 39 weeks of PUA payments commencing on the later of January 27, 2020 or when the individual first became eligible for benefits and ending on or before December 31, 2020.<sup>4</sup> PUA payments are *not* available to those who have the ability to telework with pay or who are receiving paid sick leave or other paid leave benefits regardless of whether the individual’s inability to work would otherwise make them eligible to receive a PUA benefit.

In order to be entitled to a PUA payment an applicant will need to provide a self-certification that the individual is otherwise able to work and available for work within the meaning of state law except that the individual is unemployed, partially unemployed or unable or unavailable for work because of one of the following:

- the individual is diagnosed with COVID-19 or experiencing symptoms and seeking medical diagnosis;
- a member of the individual’s household is diagnosed with COVID-19;
- the individual is providing care for a family member or member of the household who has been diagnosed with COVID-19;
- the individual is the primary caregiver for a child or family member unable to attend school or another facility closed due to COVID-19;

- the individual is unable to reach the place of employment due to an imposed quarantine or because advised by a medical provider to self-quarantine due to COVID-19;
- the individual was scheduled to commence employment and does not have a job or is unable to reach the job due to COVID-19;
- the individual became the breadwinner because the head of household has died from COVID-19;
- the individual had to quit his or her job as a direct result of COVID-19; or
- the individual’s place of employment is closed due to the COVID-19 public health emergency.

Because the individuals entitled to PUA benefits were not traditionally entitled to state UI benefits, the CARES Act provides that, in addition to the \$600 PUA weekly benefit, self-employed individuals ‘or those who do not otherwise qualify for unemployment compensation under State law’ will be entitled to a weekly benefit amount which may not be less than the minimum weekly benefit amount calculated under regulations contained in the Disaster Unemployment Assistance (“DUA”) program described at 20 CFR 625. The minimum DUA weekly benefit amount ranges from a low of \$106 in Mississippi to a high of \$268 in Massachusetts.<sup>5</sup> A link to each states’ minimum disaster unemployment assistance weekly benefit amount for the period April 1, 2020 through June 30, 2020 is [available here](#).

## ANSWERS TO SOME GENERAL QUESTIONS RELATING TO UI BENEFITS UNDER THE CARES ACT

### Where do workers apply for PUC or PUA benefits?

Claims for the benefits provided by the CARES Act are filed by visiting the website of the state unemployment compensation agency. Because workers who will be seeking PUA benefits made available by the CARES Act are not regularly eligible for state UI benefits, they will be filing a claim on newly created forms/applications, which will be available on the state unemployment compensation agency website once finalized. There is no federal application for these benefits and no federal website has been created to accept applications for these benefits.

### Are workers entitled to a PUC or PUA payment without respect to the reason the worker is no longer working?

If work is available and the worker is not unable to work due to a qualifying reason, benefits will **not be available** under either state law or under the CARES Act.

### How long are the CARES Act unemployment benefits available?

PUA benefits are available for a period of 39 weeks after initial eligibility (the later of January 27, 2020 or when the individual first became eligible for benefits) through

December 31, 2020. PUC benefits are available only through July 31, 2020. Workers are provided with an additional 13 weeks of state UI benefits (under the PEUC provisions of the CARES Act) if an employee exhausts the regular UI (which in most states extends for a period of 26 weeks).

### **Are employees receiving a reduced state UI benefit based on a reduction of hours entitled to the full PUC payment or is that payment reduced?**

According to the DOL, if the individual is eligible to receive at least one dollar of underlying UI benefits for the claimed week (whether under state unemployment compensation law or the CARES Act), the claimant is entitled to the full \$600 PUC payment.

### **Are PUA or PUC payments subject to the waiting week period contained in state UI laws?**

The CARES Act authorized states to waive their waiting week periods so that benefits are provided from the date of unemployment without application of any waiting week period. Most states have adopted, and the remaining are expected to adopt this waiver.

### **Are PUA and PUC payments subject to taxation?**

Yes. The regular weekly UI benefit amount, as well as any PUC or PUA payment made to an individual, are subject to 10 percent federal withholding tax if the applicant elects to have taxes withheld from benefits payment.

### **What options do employers have if they believe an employee who is not entitled to benefits has filed an unemployment claim?**

Employers will receive a notice that an employee has filed a claim for benefits and will be asked to provide basic wage information to the state UI agency. To the extent that the employee is not entitled to benefits, *i.e.*, because work is

available and turned down by the employee, because the employee had quit work without a compelling or necessitous reason or had been involuntarily discharged for willful misconduct, the employer can contest the claim. Additionally, in most jurisdictions employers will be entitled to ‘relief from charges’ (meaning their UC tax rate will not increase) as a result of COVID-19-related claims if their business is temporarily closed due to COVID-19. The DOL is concerned about fraudulent claims being filed and has suggested it will seek repayment of benefits that were procured as a result of fraud and may pursue criminal sanctions against individuals who engage in fraud.

### **Will filing for UI benefits, including PUC and PUA benefits made available under the CARES Act, make an immigrant a ‘public charge’ and jeopardize an application for a green card or for citizenship?**

According to the U.S. Citizenship and Immigration Services, filing for unemployment benefits does not, in and of itself, make an immigrant a ‘public charge’ and should not negatively impact an application for a green card or citizenship.

Blank Rome’s [Coronavirus \(“COVID-19”\) Task Force](#) is continuing to monitor the COVID-19 crisis and will provide further updates for employers as they become available.

### **For additional information, please contact:**

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1. It is widely expected that payments of Pandemic Unemployment Compensation (the extra \$600 per week paid to workers who traditionally were entitled to state-paid benefits) will begin during the week of April 13, 2020 (retroactive to the week of March 29) while payment of Pandemic Unemployment Assistance (benefits for those not otherwise eligible for regular UI benefits) may not begin until the end of April.
2. For example, an employee who was being paid \$15/hour while working would be eligible for state UI of \$240/week (40 percent of the employee’s base pay of \$600) plus Pandemic Unemployment Compensation of \$600/week, an increase of more than \$200 over that which the employee was making while working.
3. In addition to providing the \$600 weekly Pandemic Unemployment Compensation and Pandemic Unemployment Assistance benefits, the CARES Act created a new program, Pandemic Emergency Unemployment Compensation (“PEUC”), that allows state UI claimants to receive an additional 13 weeks of regular benefits after they exhaust their regular benefits, which are limited to 26 weeks.
4. As recently as April 10, 2020, Governor Wolf’s office was reporting that individuals who might be eligible for PUA payments cannot apply through the UC online system at this time because the U.S. Department of Labor is requiring that PUA be tracked separately from regular UI and, as a result, Pennsylvania needs to build a new online platform to process PUA benefits. Once online, payments will be backdated to January 27, 2020 or the first week the individual was unable to work due to COVID-19.
5. The DUA minimum weekly benefit amount in Pennsylvania is \$197; New York is \$182; New Jersey is \$231; Delaware is \$137; the District of Columbia is \$180; Illinois is \$200; Texas is \$209; and California is \$168.